THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 13134 of 2006

Dated: 03-07-2006

Between:

Sridhar Goud

..... PETITIONER

AND

The Deputy Commissioner of Proh.& Excise,
Hyderabad Division at Hyderabad and others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 13134 of 2006

O R D E R:

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise appearing for the respondents.

The petitioner is holding a TFT licence bearing No.751 in respect of counter No.12 of toddy shop of Yenkepally village, Pudur Mandal, Ranga Reddy District. On 22-04-2006 the petitioner was served with the proceedings, dated 06-04-2006, passed by the second respondent suspending the licence of the petitioner with immediate effect, pending enquiry into certain allegations. A perusal of the said order shows that the Prohibition and Excise Inspector inspected the toddy shop of the petitioner on 19-12-2005 and the sample drawn from the toddy available therein was found free from Chloral Hydrate in the spot test. However, the Government Chemical examiner of Prohibition and Excise, on analysis, opined that the sample was fermented toddy adulterated with Diazepam. On the said allegation, in exercise of powers conferred under Section 31(1)(b) of A.P. Excise Act, 1968, the licence of the petitioner was suspended pending enquiry. Immediately thereafter the petitioner submitted a representation on 24-04-2006 to the second respondent stating that the allegations made in the order dated

06-04-2006 were false and without any basis and that there was no inspection as alleged and the entire case was foisted against him. That apart, he also requested to send second sample for analysis under Rule 24 of the A.P. Excise (Arrack and Toddy Licences General

Conditions) Rules, 1969 (for short 'the Rules') as amended by G.O.Ms.No.1120 dated 11-11-2003. Without considering the said request, the petitioner was served with a show cause notice dated 08-05-2006 calling upon him to show cause as to why his licence should not be cancelled. Aggrieved by the said action, this writ petition is filed seeking a declaration that the action of the second respondent in initiating steps for cancellation of the licence of the petitioner without considering his request to send second sample to the Independent Laboratory is arbitrary and illegal.

The learned Government Pleader under instructions states that the representation made by the petitioner on 24-04-2006 requesting to send second sample for analysis to an Independent Laboratory was received by the second respondent on the same day.

Under Rule 24 of the Rules, the Excise Officer is required to take three samples in the presence of the licensee and the same shall be sent to the Court having jurisdiction with request to send one of the samples to the Chemical Examiner of the Excise Department having jurisdiction in the Region in which licensed premises is situated. The licensee who desires to send the second sample for analysis to an Independent Laboratory should apply within 7 days and such application should be accompanied by a demand draft for an amount sufficient to cover the analysis charges.

The respondents did not dispute the fact that the petitioner herein submitted such representation within the time prescribed.

If so, in terms of Rule 24 of the Rules, the second respondent is bound to send the second sample for analysis to an Independent Laboratory.

Accordingly, the writ petition is disposed of with a direction to the respondents to pass appropriate orders in terms of Rule 24 of the Rules forthwith and till then not to take any coercive steps against the petitioner. The petitioner is granted liberty to submit its explanation to the show cause notice, if not already submitted, within two weeks from the date of receipt of this order.

The writ petition is accordingly disposed of. No costs.

G. ROHINI, J

Dated: 03-07-2006

Note: Issue C.C. in three days

B/o

KLP